

# Proactive Release of Official Information



## AGENCY GUIDANCE

This guidance is to assist agencies to develop internal policies and practices in relation to the proactive release of official information, including responses to requests for information under the Official Information Act 1982 (OIA).

Under Commitment Two of New Zealand's Open Government Partnership National Action Plan 2016-2018, the Government has committed to improving agency practices around proactive release of information and requests for official information under the OIA.

Proactive release of information promotes good government, openness and transparency and fosters public trust and confidence in agencies.

### Scope

Proactive release includes:

- publishing (usually via the internet) a wide variety of agency-produced documents, without any request from the public (e.g. Annual Reports, Statements of Intent, research reports, briefings, etc).
- publishing the same (or edited) information that has previously been released to an individual requester under the OIA.

Individual agencies will have their own publishing protocols, and we suggest that these will be suitable for most proactive releases. However, some information needs to be treated differently when released proactively, and this guidance will help you manage the risks associated with that type of information.

### Cabinet papers and supporting material

Only Ministers can approve the proactive release of Cabinet papers (Cabinet Manual, Chapter 8). Further information on the processes and responsibilities that follow a Minister's decision to proactively release Cabinet material can be found in Cabinet Office Notice (15)3.

## PRINCIPLES AND LEGISLATION

### Guiding principles

Agencies are encouraged to establish internal policies and practices that:

- support increased proactive release (including publishing appropriate OIA responses), in line with the OIA's purpose to make official information more freely available
- ensure that employees exercise caution and due diligence before making official information available and assess the potential effect of releasing the information.

## **Section 48 of the OIA**

Under section 48 of the OIA, agencies and other people are protected from liability that may otherwise result from making information available in good faith “pursuant to the OIA” (including consequences that follow from the making available of that information).

The protections in section 48 do not extend to the proactive publication of information, including information that has previously been released to an individual requester under the OIA.

Agencies must consider any potential liability, whether civil or criminal, that might result from the proactive publication of any official information, (for example, defamation, copyright, privacy or breach of contract) before deciding to publish the information.

Agencies can still choose to make official information publicly available without a request, but before doing so, should have a process to confirm that it is appropriate to publish the information. This applies even where the information has been previously released under an OIA request.

## **CONSULTATION**

When agencies are considering publishing official information, they may need to consult with Ministers or notify them in accordance with the “no surprises” principle (Cabinet Manual paragraphs 8.50 – 8.54).

If the document proposed for release includes information relating to another agency, agencies may also need to consult with that agency to allow it to conduct its own risk assessment.

### **Information about agency employees**

There may be instances where an agency considers that it is in the public interest to include the name of an official (typically a key decision maker) as part of an information release.

When an agency is considering publishing personal information about an official they should conduct a thorough risk assessment, including consulting the official to check whether they are comfortable with publication of their personal information.

If an agency considers it is in the public interest to publish the name of an official from another agency (for example a document relating to a cross-agency work programme), they should consult with the relevant agency.

## **OIA RESPONSES**

### **Publication of OIA responses — good practice considerations**

- When considering publishing OIA responses, agencies should reconsider the information previously released to a requester under the OIA and reassess whether the information is suitable for publication more generally.
- An agency may decide to release information in addition to what has been requested to place that information in the proper context and mitigate any potential harm from its release.
- Unless it is clear that a response will not be published (for example, a response to a request for personal information), response letters should advise requesters that the response (with personal details removed for responses to natural persons) may be published on the agency’s website. It may be useful to include this as a standard phrase in agency templates.
- Agencies should let all relevant parties (such as external agencies) know that it is proposing to publish the response.
- It is good practice to publish responses shortly after they are provided to the requester (allowing a short period for requesters to consider the information before it enters the public domain). It may be more efficient to publish responses in batches, rather than as they are conveyed to individual requesters.

- When establishing an online page for publication of OIA responses, it can be useful to include information about how frequently the page will be updated. You may wish to consider setting up an RSS feed (a type of web feed which provides users with updates about online content) to allow those who frequently request information (such as media organisations) to be alerted to new releases.
- Web pages should be easily accessible from the agency's home page. For each response, the agency should include the publication date, a description of the information at issue, and a link to the information and response. Best practice would be to include a search facility that applies to the information and responses.
- Consider a regular publication schedule (such as weekly updates).
- If an agency's decision on release is changed or overturned on complaint to the Ombudsman, it should update the information published online.
- Where the Crown holds copyright, information should be made available on open licensing terms where possible.

#### Useful links:

- Treasury: [The Treasury's publication schedule](#)
- Ombudsman guidance: [Official information legislation guides | Office of the Ombudsman](#)
- Legislation: [Official Information Act 1982](#)